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REPORT OF THE INTERNATIONAL TRIBUNAL FOR THE PROSECUTION OF PERSONS RESPONSIBLE FOR SERIOUS VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW COMMITTED IN THE TERRITORY OF THE FORMER YUGOSLAVIA SINCE 1991

SECURITY COUNCIL
Fiftieth year

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly and to the members of the Security Council the second annual report of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, submitted by the President of the International Tribunal in accordance with article 34 of its statute (see S/25704, annex), which states:

> "The President of the International Tribunal shall submit an annual report of the International Tribunal to the Security Council and to the General Assembly."

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LETTER OF TRANSMITTAL

14 August 1995

Your Excellencies,

I have the honour to submit the second annual report of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, dated 14 August 1995, to the Security Council and the General Assembly, pursuant to article 34 of the statute of the Tribunal.

Please accept, Excellencies, the renewed assurances of my highest consideration.

(Signed) Antonio CASSESE
President

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SECOND ANNUAL REPORT OF THE INTERNATIONAL TRIBUNAL FOR THE PROSECUTION OF PERSONS RESPONSIBLE FOR SERIOUS VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW COMMITTED IN THE TERRITORY OF THE FORMER YUGOSLAVIA SINCE 1991

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INTRODUCTION

1. Since its first annual report, the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (referred to herein as "the Tribunal") is now substantially closer to realizing its principal objectives as laid down in Security Council resolutions 808 (1993) and 827 (1993). It has started to meet the hopes and expectations of the victims of events in the former Yugoslavia. In the early stages of its existence, a number of problems, described in last year's report, delayed the Tribunal and prevented it from carrying out its mandate. Now, the preparatory work has been completed and trial activity has begun, opening a second chapter in its development.

2. The first annual report covered a period (November 1993-July 1994) in which the Tribunal laid the foundations for its existence as a judicial organ. This process has continued and developed in the last 12 months. The main areas of activity fall into four categories:

(a) Establishing the legal framework of the Tribunal's operations. The Tribunal's rules of procedure and evidence ("the rules"), as well as its rules of detention, have been revised and amended. A directive for the assignment of defence counsel, establishing a legal aid system for the Tribunal, has been drafted and adopted. The 1993-94 Yearbook, a Manual for Practitioners and the Tribunal Handbook, a collection of basic texts regulating the work of the Tribunal, have all been published;

(b) Establishing the necessary material infrastructure. The material structures necessary for any legal system to operate, namely a courtroom and detention facilities, which were under construction in the last reporting period, have been completed and are now fully functioning;

(c) Recruitment of staff. The recruitment of necessary staff continues. Following Professor van Boven's resignation, effective 31 December 1994, a new Registrar, Mrs. Dorothee de Sampayo Garrido-Nijgh, was appointed. Many other staff have been appointed in 1995. In accordance with the United Nations guidelines, recruitment was based on equitable geographical distribution. The Tribunal's entire staff now numbers more than 200 persons. Some Governments have responded to the Tribunal's appeals for assistance by seconding persons to the Tribunal and paying their salaries and special allowances. The contribution of secondees to the Tribunal has been invaluable;

(d) Enactment of implementing legislation by States. Considerable efforts have been made to encourage States to enact implementing legislation so that they can cooperate fully with the Tribunal. Their cooperation is a precondition to the effective prosecution of offenders under the Tribunal's statute. Following repeated appeals by the Secretary-General of the United Nations and by the Tribunal, a greater number of States have now passed implementing legislation.

3. The Tribunal has therefore moved on to the operational stage of its development. Investigations have been carried out by the Office of the Prosecutor, indictments have been submitted, the first defendant has been brought to The Hague to stand trial and the pre-trial phase of those proceedings has commenced. Three deferral applications by the Prosecutor have been granted by the Trial Chambers and indictments subsequently submitted and confirmed in two of those cases. It is expected that an indictment in the remaining case will be submitted before the end of the year.

4. The work of the Tribunal is still complicated by the fact that warfare continues unabated in the former Yugoslavia. This greatly aggravates the logistic difficulties involved in, for example, the examination and calling of witnesses, the conduct of investigations in the field and the execution of arrest warrants.

5. Despite this, the Tribunal is now equipped to prosecute those alleged to have committed serious violations of international humanitarian law in the former Yugoslavia since 1991 in accordance with its statute and rules and the precepts of international criminal law. Whatever the political consequences or the eventual outcome of the conflict in the former Yugoslavia, the Tribunal will not flinch from this task.

Part one

MAIN ACTIVITIES OF THE TRIBUNAL TO DATE

I. THE CHAMBERS

A. Judicial action

6. In the past 12 months the real judicial work of the Tribunal has begun. Eight indictments against 46 individuals have been confirmed and arrest warrants have been issued against those accused. The Tribunal has held three hearings at the request of the Prosecutor for deferral to the Tribunal's competence of proceedings or investigations pending in national jurisdictions. In addition, preliminary motions in the Tribunal's first trial have been heard.

1. Indictments

7. The first indictment reviewed by the Tribunal involved Dragan Nikolić ("Nikolić") and was confirmed on 4 November 1994 by Judge Odio-Benito (see paras. 55 and 56 below). Two other indictments, confirmed by Judge Karibi-Whyte on 13 February 1995, involve charges against a group of 21 persons. The defendant Duško Tadić ("Tadić"), the subject of the Tribunal's first trial, is one of those 21 accused. On 21 July 1995, three indictments were confirmed by Judge Vohrah in the cases of Sikirica and others (Keraterm camp investigation), Miljković and others (Bosanski Šamac), and Jelisić and Češić (Brčko). These cases are described in detail in paragraphs 67 to 71. On 25 July 1995, two indictments were confirmed by Judge Jorda in the cases of Milan Martić ("Martić"), President of the Croatian Serb administration (see para. 72), and

Radovan Karadžić ("Karadžić") and Ratko Mladić ("Mladić"), respectively the President and the Commander of the army of the Bosnian Serb administration in Pale. 1/ In every case where an indictment was confirmed, arrest warrants for the accused were issued and transmitted to the appropriate authorities. On 2 August 1995, the Trial Chamber presided over by Judge Karibi-Whyte, on a motion from the Prosecutor under article 29 of the statute, issued an order requesting States to assist the Tribunal in the arrests of Karadžić, Mladić and Martić by providing information as to their movements and location. This order, and accompanying documents, was sent to all permanent missions to the United Nations in New York, including the observer missions of Switzerland, the Holy See and Palestine, on 3 August 1995.

2. Deferral hearings

8. On 8 November 1994, before the Trial Chamber, composed of Judges Karibi-Whyte, Odio-Benito and Jorda, the Tribunal held its first public hearing in a deferral application filed by the Prosecutor on 12 October 1994 in the Tadić case. Tadić was, at the time, the subject of proceedings initiated by German judicial authorities. The application asked the Trial Chamber to request the German authorities to defer to the competence of the Tribunal. The Trial Chamber approved the Prosecutor's application.

9. Two other deferral requests were filed by the Prosecutor on 21 April 1995 as part of a strategy of indicting civilian and military leaders alleged to be responsible for grave violations of international humanitarian law. One of the cases deals with crimes alleged to have been committed between October 1992 and May 1993 in the region of the Lašva river valley, including the village of Ahmići, in central Bosnia and Herzegovina. The crimes are said to have been committed by Bosnian Croat forces who launched an offensive against the Muslim population. The details of the investigation are set out in more detail in paragraphs 64 to 66 below. The Trial Chamber, composed of Judges McDonald, Deschênes and Vohrah, heard the Prosecutor's application on 9 May 1995 and issued its Decision granting the application on 11 May 1995.

10. The second deferral request of 21 April 1995 focused on the Bosnian Serb hierarchy in Pale and, more specifically, on its leader, Karadžić, the Commander of the armed forces, Mladić, and the Minister of Internal Affairs, Mico Stanišić ("Stanišić").

11. The Trial Chamber, composed of Judges Karibi-Whyte, Odio-Benito and Jorda, considered the Prosecutor's request for deferral regarding the prosecution in Bosnia and Herzegovina of Karadžić, Mladić and Stanišić, and granted the request in its decision of 16 May 1995. The Judges devoted a significant part of their decision to the issue of individual criminal responsibility of persons in positions of authority, a responsibility clearly indicated in article 7 of the Tribunal's statute. The Chamber declared that "the official capacity of an individual even de facto in a position of authority ... does not exempt him from criminal responsibility and would even tend to aggravate it".

3. The Tadić trial

(a) Initial appearance

12. During 1995 there were several significant developments in the Tadić case. On 13 February 1995 Judge Karibi-Whyte confirmed an indictment against Tadić, jointly with another accused, Goran Borovnica. Tadić is charged with crimes arising out of six separate incidents which are alleged to have occurred at the Omarska prison camp in the Opstina of Prijedor, between June and August 1992, an incident arising out of the surrender of the Kozarac area in May 1992 and a further set of charges in connection with events in the villages of Jaskići and Sivci in June 1992. The charges include allegations of grave breaches of the Geneva Conventions (article 2 of the statute), violations of the laws or customs of war (article 3) and crimes against humanity (article 5). The indictment against Tadić also includes an allegation of rape as a crime against humanity, the first time such a charge has been brought.

13. On 31 March 1995 the German Parliament enacted legislation on cooperation with the Tribunal which enabled Germany to defer to the Tribunal's jurisdiction and to transfer Tadić to The Hague on 24 April 1995. Tadić made his initial appearance before a Trial Chamber on 26 April 1995. He was represented by Professor Michail Wladimiroff and Mr. Milan Vujin, the former having been assigned as counsel to Tadić by the Tribunal upon his claiming to be indigent. Tadić pleaded not guilty to all of the charges contained in the indictment.

(b) Prosecutor's motion for protection of the identity of witnesses

14. On 18 May 1995, the Prosecutor filed a motion under rule 72 of the rules for an order "continuing the non-disclosure of the names of the victims and witnesses given pseudonyms in the indictment and in the evidence supporting the indictment". The defence was able to agree to certain items of relief requested but contested others and an in camera hearing was conducted by the Trial Chamber on 21 June 1995. In a majority decision rendered on 10 August 1995, the Trial Chamber granted the Prosecutor's request for protection from public disclosure of the names and details of six witnesses and ordered that their evidence would be given in closed sessions, although edited recordings and transcripts of those sessions would be made available after review by the Victims and Witnesses Unit. The Trial Chamber also authorized the use of screening or other appropriate methods for alleged victims of sexual assault to prevent them from being re-traumatized by seeing the accused. On the subject of witness anonymity, having reviewed the applicable principles of law and the circumstances of each case, the majority of the Chamber granted the Prosecutor's request in respect of three witnesses who would be allowed to testify without divulging their identity to the accused, subject to a number of safeguards, for example that the judges should know the witness's identity and be permitted to observe his demeanour throughout the proceedings. Judge Stephen delivered a separate opinion, denying, in principle, any anonymity of witnesses as far as the accused and his counsel were concerned. The Trial Chamber also ordered that the protected witnesses in the case should not be photographed, recorded or sketched while in the precincts of the Tribunal.

(c) Preliminary motions by the accused

15. On 23 June 1995, counsel for Tadić filed three preliminary motions under rule 73; first, an objection based on lack of jurisdiction, challenging the legality of the establishment of the Tribunal by the Security Council, the primacy of the Tribunal and its competence ratione materiae; secondly, an objection based on defects in the form of the indictment; thirdly, an objection based on lack of jurisdiction on the grounds of non bis in idem, a principle recognized in article 10 of the statute and rule 13. The Prosecutor filed a response to those motions on 7 July 1995. Another motion challenging the exclusion of evidence obtained from the accused was filed on 3 July 1995. Oral arguments regarding the defence motion on jurisdiction were presented to the Trial Chamber, Judge McDonald presiding, on 25 and 26 July 1995. The decision was rendered on 10 August 1995. Denying the motion, the Trial Chamber held that the Tribunal lacked the competence to review the decision of the Security Council to establish the Tribunal, that the conferral of primacy did not violate principles of State sovereignty under international law and that in the case concerned it was not necessary for its competence ratione materiae to decide whether or not the conflict in the former Yugoslavia was international in character. On 14 August 1995, defence counsel filed notice of interlocutory appeal against the Decision on jurisdiction; the appeal will probably be heard in September. Oral arguments in the other defence motions will be heard only after the issue of jurisdiction has been finally disposed of. On 8 August 1995, the Trial Chamber ordered that a motion by the Prosecutor for leave to amend the indictment be submitted to Judge Karibi-Whyte.

4. Proceedings under rule 61

16. Under rule 61 (A), if the judge who confirmed an indictment is satisfied that the Prosecutor has taken all reasonable steps to effect personal service of a warrant of arrest on the accused, including recourse to the appropriate authorities of the State in whose territory or under whose jurisdiction and control the accused is believed to be located, and has otherwise tried to inform the accused of the existence of the indictment by publication of newspaper advertisements, he shall order that the indictment be submitted to his Trial Chamber. The Trial Chamber, in a public session, then determines whether there are indeed reasonable grounds for believing that the accused has committed the crimes charged in the indictment. All the evidence that was before the judge who initially confirmed the indictment is submitted to the Trial Chamber, and the Prosecutor may also call and examine any witness whose statement was submitted to the confirming judge. Thereafter, if the Trial Chamber decides that the above criterion has been met, it so announces and issues an international arrest warrant for the accused.

17. On 16 May 1995, the Prosecutor filed an application pursuant to rule 61 in the case of Nikolić, an indictment against him having been confirmed by Judge Odio-Benito on 4 November 1994. This application was considered by Judge Odio-Benito on 16 May 1995, on which date she granted the Prosecutor's application and ordered that the indictment against Nikolić be submitted to the full Trial Chamber. The proceeding before the Trial Chamber has not yet taken place.

5. Amicus curiae

18. Rule 74, entitled "Amicus curiae", provides that a Trial Chamber may "if it considers it desirable for the proper determination of the case, invite or grant leave to a State, organization or person to appear before it and make submissions on any issue specified by the Chamber". Based on this provision, the Government of the Federal Republic of Germany appeared in the deferral hearing in the Tadić case and the Government of the Republic of Bosnia and Herzegovina appeared in the deferral hearings on the Prosecutor's investigation with respect to Lašva river valley and the investigation of the Bosnian Serb leaders. In addition, a number of persons and organizations 2/ requested and were granted leave to file written briefs as amicus curiae in the Tadić case on the subject of anonymity of witnesses and the protection of victims and witnesses. Also in the Tadić case, the Government of the United States of America was given leave to submit a brief on the preliminary motion by the accused objecting to the Tribunal's jurisdiction. The United States submitted its brief based "on its special interest and knowledge as a permanent member of the United Nations Security Council and its substantial involvement in the adoption of the statute of the Tribunal", and submitted, among other things, that objecting to the creation of the Tribunal because no such action had been taken before by the Security Council "would condemn the international community to refrain from actions necessary to maintain the peace because such actions had not been taken in the past [and] would effectively prevent the international community from developing and advancing the system of international law". Informal guidelines relating to amicus curiae practice were adopted by the judges at the seventh plenary session.

B. Regulatory activity

1. Amendments to the rules of procedure and evidence

19. The rules were adopted by the judges at the end of the second plenary session in February 1994. Since then, the rules have been amended on a number of occasions to reflect a variety of concerns, including a concern to broaden the rights of the accused and to strengthen the rights of victims and witnesses, particularly victims of alleged sexual offences, and to clarify the powers of the Prosecutor.

20. Two rules were the subject of individual amendment in May and October 1994. In addition, during its fourth plenary session, held in July 1994, the Tribunal established an Inter-sessional Working Group for the Amendment of the Rules, composed of Judges Odio-Benito, Li, Deschênes (Chairman), Stephen and Abi-Saab, to consider comments received from various sources, including Governments, non-governmental organizations and individuals. The Working Group presented its report to the fifth plenary session in January 1995. Based on that report, the judges in plenary adopted amendments to 41 of the 125 rules 3/ and adopted one new rule, rule 116 bis. Those amendments are discussed in paragraphs 21 to 27 below. Three more amendments were adopted at the sixth plenary session, held from 1 to 3 May 1995. 4/ Moreover, further amendments to four rules were adopted at the seventh plenary session, held from 12 to 16 June 1995. 5/

21. The amendments adopted at the fifth plenary session were adopted with clear goals in mind. Those goals can be classified into five categories. 6/

(a) To take account of practical problems that have arisen or may arise in the implementation of the statute or the rules

22. The addition of rule 66 (C) affords a good example of this category of amendment. It provides that the Prosecutor may apply for non-disclosure of information where its disclosure could prejudice investigations, affect the security interests of a State or might otherwise be contrary to the public interest. This amendment, which was suggested by the Prosecutor, will facilitate the acquisition of information from Governments and other sensitive sources. 7/

(b) To take account of the political entities now found in the territory of the former Yugoslavia

23. A notable amendment in this category is to rule 2 (A), the "Definitions" section, which added the following definition of the word "State" for the purposes of prosecuting suspects and accused and transmitting official documents (see paras. 91-93):

> "A State Member or non-member of the United Nations or a self-proclaimed entity de facto exercising governmental functions, whether recognized as a State or not;"

Also falling within this category are the amendments to rules 8, 9, 10, 12 and 13, which removed the previous references to "national" courts, a term which has a particular or restrictive meaning in some jurisdictions.

(c) To improve the working of the Tribunal

24. Perhaps the most important example of such an amendment is amended rule 61 (B), which expressly allows the Prosecutor in the course of proceedings under rule 61, described in paragraph 16 above, to "call before the Trial Chamber and examine any witness whose statement has been submitted to the confirming Judge". Another important example is the amendment made to rule 70 at the suggestion of the Prosecutor to provide protection for the sources of confidential information. 8/

(d) To broaden the rights of suspects and accused persons

25. Rule 66 (A) is a fitting illustration of this category of amendments. Originally, it provided only that the Prosecutor must make available to the defence copies of supporting material "which accompanied the indictment when confirmation was sought". This obligation has now been extended to "all prior statements obtained by the Prosecutor from the accused or from prosecution witnesses".

26. Similarly, rule 68 was amended so that the Prosecutor's obligation to disclose to the defence exculpatory evidence which tended "to suggest the

innocence or mitigate the guilt of the accused", now extends to any evidence which "may affect the credibility of prosecution evidence". 9/

(e) To protect the rights of victims and witnesses

27. Rule 96, which deals with evidence in cases of sexual assault, has been amended to add sub-clause (iii):

> "before evidence of the victim's consent is admitted, the accused shall satisfy the Trial Chamber in camera that the evidence is relevant and credible".

Another amendment in this category is rule 39 (ii). The amendments of the seventh plenary session regarding the Victims and Witnesses Unit's locus standi to propose measures for the protection of witnesses to the Chamber would also fall into this group.

2. Amendments to the rules of detention

28. The rules governing the detention of persons awaiting trial or appeal before the Tribunal or otherwise detained on the authority of the Tribunal (the "rules of detention"), adopted on 5 May 1994, were amended on 16 March 1995. The changes arose out of discussions relating to the role of the body which will inspect the conditions under which detainees are remanded in the Tribunal's detention unit. The International Committee of the Red Cross (ICRC) has offered to contribute its personnel and expertise for inspections of the Tribunal's detention unit. The amendments clarify the respective roles of ICRC and the Tribunal and provide detainees with greater freedom to communicate with the inspecting authority.

3. Adoption of regulations for detainees

29. The Registrar, in cooperation with the Commanding Officer of the detention unit, issued regulations under the rules of detention in April 1995 in the following four areas: regulations for the establishment of a disciplinary procedure for detainees; regulations for the establishment of a complaints procedure for detainees; regulations to govern the supervision of visits to and communications with detainees; and house rules for detainees. Copies of these regulations were available in the appropriate language in time for the arrival of the first detainee at the Detention Unit in April 1995.

II. THE OFFICE OF THE PROSECUTOR

Introduction

30. The period under review saw the Office of the Prosecutor evolve from a theoretical concept created by a resolution of the Security Council to an operational reality. This is the first time that a truly international prosecutor's office has ever been established. It has required complex

recruiting methods, blending people from over 30 nations into a cohesive and efficient team. That such a team is now working efficiently and effectively bears testimony to the high calibre and expertise of the personnel the Office has been able to attract.

31. A critical resource limitation of the Tribunal is its small capacity to hear trials. As there are only two Trial Chambers sharing, together with the Appeals Chamber, a single courtroom, a crucial and difficult area of prosecutorial policy is to ensure that only the most appropriate cases are referred for trial. This was one of the key considerations behind the Office's decision to give priority to the investigation of the most serious violations of international humanitarian law and those who may be ultimately responsible for them.

A. Staffing

32. Much of 1994 was spent laying the essential groundwork for an operational Prosecutor's office: recruiting and selecting experienced staff; establishing a working relationship with Member States, other United Nations organs, and non-governmental organizations (NGOs); interacting with the media; building an office structure; establishing operating procedures and office systems; defining an investigative and prosecutorial strategy; and developing a budget.

33. Initially, the staffing of the Office of the Prosecutor was a slow process, with the first investigator and first legal officer taking up duty only in June 1994. By July 1994 there were sufficient staff in the Office to begin field investigations and by November 1994 the first indictment was presented and confirmed. By late May 1995, there were 116 staff in the Office, comprising 81 United Nations-appointed staff and 35 staff seconded by 6 countries. The staff of the Office, which comes from 34 countries, includes 35 investigators, 29 lawyers, 20 researchers and analysts and 32 support personnel. The current budget for the Tribunal provides for 126 posts in the Office of the Prosecutor, and action is being taken to fill the remaining vacancies. The efforts to fill these vacancies have included a recruiting mission to a number of the countries which are under-represented at the Tribunal.

34. In addition, over the last year, the computer system of the Office of the Prosecutor has become partly operational. The system, which was financed from funds contributed to the Tribunal by the Government of the United States, includes a structured data base specially developed for the Office and allows staff to identify, locate, retrieve and analyse documents and information for the purpose of both investigations and prosecutions. The system will also enable the electronic production of evidence in proceedings before the Chambers of the Tribunal.

B. Changes in the structure of the Office of the Prosecutor

35. The first annual report, covering the period from 17 November 1993 to 28 July 1994, outlined the basic structure and functions of the Office of the Prosecutor as envisaged at the time. However, important changes have been made in the structure of the Office since the publication of the first annual report.

1. Appointment of the Prosecutor

36. The Prosecutor, the Honourable Justice Richard J. Goldstone, was appointed on 8 July 1994 and took office on 15 August 1994.

2. Field offices

37. One of the most important organizational developments over the last year has been the Prosecutor's request to establish liaison offices in Belgrade, Sarajevo and Zagreb. Included in the 1995 budget of the Office of the Prosecutor, these three-person offices are intended to fulfil a number of essential functions: to provide support to investigative teams for their fieldwork in the former Yugoslavia; to act as liaison between the Office of the Prosecutor and local and national Governments, war crimes commissions, NGOs and various United Nations agencies; to provide expert legal advice to the Office of the Prosecutor on republic and federal law in the former Yugoslavia; to coordinate and report on the work of the observers monitoring war crimes trials in the former Yugoslavia; and to advise the Office of the Prosecutor of important developments relevant to the work of the Office of the Prosecutor, including monitoring the situation with respect to the United Nations peace forces in the former Yugoslavia and local media reports.

3. Prosecutor's secretariat

38. To enhance the effectiveness of both the Prosecutor and the Deputy Prosecutor, especially important in the light of the Prosecutor's subsequent appointment as Prosecutor of the Rwanda Tribunal (see para. 74), a secretariat was created in the latter half of 1994. The function of the eight-person secretariat is to advise and support the Prosecutor and Deputy Prosecutors for the former Yugoslavia and Rwanda on a wide range of issues, e.g., legal, political, gender-related, administrative, organizational and media.

4. Investigations Unit, Strategy Team

39. Given the tremendous amount of extant and potentially critical information relating to the conflict in the former Yugoslavia and the importance of providing strategic guidance to the investigative teams, the Prosecutor and his senior management team decided in early 1995 that a major restructuring of the Investigations Unit's Strategy Team, including a substantial increase in staff, was warranted.

40. The restructured Strategy Team currently consists of 15 staff divided among four sub-units. The first sub-unit, the Intelligence Analysis Unit, is responsible for disseminating information to other units within the Office of the Prosecutor and analysing information, intelligence and other material received by the Office. The second sub-unit, the Strategy Unit, updates the Director of Investigations on the status of current investigations, identifies new cases to be investigated and advises the Director as to the best investigative strategy to be followed. The third sub-unit, the Investigation Development Unit, develops new cases for the investigation teams, including rapid initial investigations in response to urgent circumstances. One important example of the value of this particular response unit was the immediate field investigation initiated by the Prosecutor into the early May 1995 missile attacks on Zagreb.

41. The fourth sub-unit, the Special Projects Unit, also provides assistance to the investigation teams in the investigation of their cases by, inter alia, debriefing witnesses, analysing the power and legal structures within the former Yugoslavia and providing a chronology of events pertaining to the former Yugoslavia. It conducts empirical studies of the violations of international law in the conflict which serve as a frame of reference for the evaluation of the investigative strategies and policies of the Prosecutor. Finally, it provides information to the investigation units of other countries which are involved in the investigation and prosecution of persons responsible for the violation of international humanitarian law committed in the territory of the former Yugoslavia.

5. Restructuring of the Special Advisory Section

42. This section originally comprised an expert in the field of international law, an expert on the military aspects of the conflicts in the former Yugoslavia and an expert on the historical and political background of the conflict. It became apparent by late 1994 that expertise in the above-mentioned areas was needed mainly in the investigation section and this capability was therefore reassigned to the Strategy Team within the Investigations Unit.

43. It also became apparent that there was an ongoing requirement for advice on comparative and criminal law matters. As a result of those requirements, a new Legal Services Section has been created to replace the Special Advisory Section. Once funding is obtained, the Legal Services Section will include several international lawyers, a gender law adviser, a criminal lawyer, a comparative lawyer and legal officers to assist each of the trial attorneys in the Prosecution Section.

6. Legal adviser for gender-related crimes

44. In order conscientiously to address the prevalence of sexual assault allegations committed in the former Yugoslavia and Rwanda, a legal adviser for gender-related crimes has been appointed. The adviser, as a member of the Prosecutor's secretariat, reports directly to the Prosecutor and the two Deputy Prosecutors and has three major areas of responsibility: to provide advice on

gender-related crimes and women's policy issues, including internal gender issues such as hiring and promotion; to work with the Prosecution Section to formulate the legal strategy and the development of international criminal law jurisprudence for sexual assaults; and to assist the Investigations Unit in developing an investigative strategy to pursue evidence of sexual assaults.

7. Internship programme

45. An internship programme within the Office of the Prosecutor was established in early 1995 to provide useful experience to law students and recent law graduates and to assist the Office in legal research and other legal tasks. The Chambers and Registry also have internship programmes.

C. Action by the Office of the Prosecutor

1. Proposals for amendments to the rules

46. Based on its experience, the Office of the Prosecutor has proposed a number of amendments to the rules, many of which have been adopted by the judges. Some examples are the amendments to rule 39 (ii) (special measures which the Prosecutor may take for the protection of victims and witnesses), 66 (C) and 70 (see paras. 19-27 above).

2. Official visits of the Prosecutor to the former Yugoslavia

47. From 2 to 9 October 1994, the Prosecutor, accompanied by the Deputy Prosecutor and senior staff members, visited the Republic of Croatia, the Republic of Bosnia and Herzegovina and the Federal Republic of Yugoslavia (Serbia and Montenegro). The purpose of the visit was to discuss in general terms ways and means of cooperation between the then authorities and the Prosecutor.

48. In Zagreb, Sarajevo and Belgrade, meetings were held with the appropriate Ministers of State, prosecutors and national war crimes committees. Meetings were also held with the Special Representatives of the Secretary-General of the United Nations, and with senior officials of the United Nations Protection Force (UNPROFOR), the Office of the United Nations High Commissioner for Refugees (UNHCR) and the European Community Monitoring Mission.

49. Following the Prosecutor's October 1994 visit to the former Yugoslavia, three senior officers of the Office of the Prosecutor, led by the Director of Investigations, visited Knin and Pale during the week of 14 November 1994. The purpose of the visit was to discuss practical cooperation between the then authorities in those two places and, in particular, to obtain documentary and other evidence relevant to the work of the Office of the Prosecutor. UNPROFOR assisted the Office by facilitating arrangements for the visit.

50. The degree of cooperation with the Tribunal exhibited by the different States and authorities varies considerably, from excellent (Sarajevo and Zagreb) to poor (Belgrade, Knin 10/ and Pale).

3. Memorandum of Understanding between the Prosecutor and the Republic of Bosnia and Herzegovina

51. On 3 December 1994, the Prosecutor and the Foreign Minister of the Republic of Bosnia and Herzegovina signed a memorandum of understanding regarding cooperation with the Tribunal. The memorandum acknowledged that the Government of the Republic of Bosnia and Herzegovina agreed to cooperate fully and unconditionally with the Prosecutor in the performance of his rights, duties and obligations under the Tribunal's statute and rules.

4. The Tadić deferral and indictment

52. On 11 October 1994, the Prosecutor presented his first official request to a Trial Chamber, namely, a request for the deferral by the Government of the Federal Republic of Germany of its investigation and prosecution of Tadić, who had been arrested by German authorities in February 1994 and was awaiting trial in Germany. The investigation by Germany into the activities of Tadić involved issues closely related to the Prijedor investigation being carried out by the Prosecutor. The Prosecutor considered that it was important for the case to be deferred to the Tribunal because the German investigation involved legal and factual issues which had implications for other investigations being carried out concurrently by the Prosecutor.

53. The Prosecutor's case was that the prosecution of Tadić would reveal systematic and widespread persecution of the Muslim civilian population in the Prijedor region, a practice commonly referred to as ethnic cleansing. The deferral application was granted by the Trial Chamber following a hearing on 8 November 1994.

54. The German Government, upon being notified of the Tribunal's action, indicated its willingness to defer jurisdiction of the Tadić case to the Tribunal once the necessary national legislation had been passed. The Prosecutor submitted an indictment against Tadić in February 1995 and the Federal Republic of Germany, once its implementing national legislation had been passed, responded promptly to the Tribunal's request for the surrender of Tadić, which occurred in April 1995. The accused appeared before the Tribunal shortly after his surrender and his case is now proceeding before a Trial Chamber (see paras. 12-15 above).

5. Nikolić indictment

55. On 1 November 1994, the Prosecutor submitted his first indictment, against Nikolić, for confirmation by a Trial Judge. On 4 November 1994 the indictment was confirmed by Judge Odio-Benito, who also issued warrants for the arrest of Nikolić.

56. It is alleged that during the summer of 1992 Nikolić was the commander of the Susica prison camp in Vlasenica, a strategic area of north-eastern Bosnia and Herzegovina. As the alleged commander and direct participant in the beatings, torture and murder that took place in the camp, Nikolić is charged with grave breaches of the Fourth Geneva Convention of 1949, violations of the laws and customs of war and crimes against humanity.

6. Prijedor indictments

57. The Opstina of Prijedor in north-western Bosnia and Herzegovina was the subject of a very thorough report of the United Nations Commission of Experts. It provides extensive materials documenting widespread and systematic breaches of humanitarian law.

58. The Prosecutor has issued two indictments in relation to the Opstina of Prijedor investigations involving a total of 21 accused persons (including Tadić), both of which were confirmed by Judge Karibi-Whyte on 13 February 1995. The Prosecutor has indicated that more indictments will follow. The two indictments issued thus far have largely concentrated on the events that occurred in the notorious Bosnian Serb camp at Omarska. The charges against the accused cover the whole range of offences contained in the statute of the Tribunal, from grave breaches of the Geneva Conventions to genocide, representing the first occasion that a charge of genocide has been brought before the Tribunal.

7. The Bosnian Serb leadership deferral and indictment

59. In early 1995, the Office of the Prosecutor became formally aware of an investigation by the Republic of Bosnia and Herzegovina into the activities of the Bosnian Serb leader Karadžić, the commander of the Bosnian Serb Army, Mladić, and the former head of the Bosnian Serbs' internal affairs, Stanišić. The Office was at the time conducting its own investigation into the responsibilities of those suspects both as individuals and as commanders or persons in authority in the conflict in Bosnia and Herzegovina.

60. The Prosecutor considered that the investigation by the Republic of Bosnia and Herzegovina was closely related to his own investigations and involved issues which had implications for them. As a consequence, the Prosecutor applied to a Trial Chamber for the issue of a formal request to the Republic of Bosnia and Herzegovina that it defer its investigations to the competence of the Tribunal. On 16 May 1995, the Trial Chamber granted the Prosecutor's application and accordingly made such a request. The Government of the Republic of Bosnia and Herzegovina has fully cooperated with the Tribunal at all times and formally concurred in the Prosecutor's application.

61. Following the deferral order in May 1995, the Prosecutor on 24 July 1995 submitted an indictment against Karadžić and Mladić for confirmation by judge of the Trial Chamber. The two Bosnian Serb leaders were charged, either on the basis of superior authority or direct responsibility, with genocide, crimes

against humanity, violations of the laws or customs of war and grave breaches of the Geneva Conventions of 1949.

62. The indictment alleges that Karadžić and Mladić were responsible for the internment of thousands of Bosnian Muslims and Croats in detention facilities where the internees were subject to torture, murder, sexual assault, robbery and other acts; the shelling and sniping campaigns against civilians in Sarajevo, Srebrenica and Tuzla; the deportation of Bosnian Muslim and Bosnian Croat civilians from the areas of Vlasenica, Prijedor, Bosanski Šamac, Brčko and Foča; the plundering and destruction of the personal property of civilians; the systematic infliction of damage and destruction on both Muslim and Roman Catholic sacred sites; and the taking of United Nations hostages for use as "human shields".

63. On 25 July 1995, Judge Jorda confirmed the Prosecutor's indictment against Karadžić and Mladić and issued warrants for their arrest. The investigation into the Bosnian Serb leadership, including Stanišić (who was included in the Prosecutor's May 1995 deferral request to the Government of Bosnia and Herzegovina), is still proceeding.

8. Lašva river valley deferral

64. As with the Karadžić, Mladić and Stanišić deferral mentioned above, the Office of the Prosecutor became formally aware in early 1995 that a court of the Republic of Bosnia and Herzegovina had been conducting an investigation of alleged ethnic cleansing by members of Bosnian Croat forces, acting under orders of certain of their political and military leaders, against the population of the Lašva river valley. Since the Office was conducting a parallel investigation into the same incidents, the Prosecutor on 21 April 1995 filed an application for a formal request for deferral by the Government of the Republic of Bosnia and Herzegovina. The deferral request focused on the Government's investigations of crimes committed between October 1992 and May 1995 against the population of the Lašva river valley area of central Bosnia and Herzegovina.

65. After hearing the deferral application, the Trial Chamber was satisfied that a deferral application was appropriate and on 11 May 1995 granted the application and issued a formal request to the Government of the Republic of Bosnia and Herzegovina to defer its investigations and prosecutions to the Tribunal. The Republic of Bosnia and Herzegovina agreed to the deferral, as it had in the Karadžić, Mladić and Stanišić deferral, and has fully cooperated with the Tribunal.

66. This deferral request differs in two distinct ways from the deferrals in the Tadić and Bosnian Serb leadership cases in that: (a) it is the first case brought to the attention of a Trial Chamber concerning non-Serb perpetrators and reflects the Prosecutor's intention to bring cases irrespective of the nationality of the perpetrators; and (b) it does not state the name of any perpetrator but addresses itself solely to events in a certain time and in a certain geographical area. The Prosecutor, in a press statement issued on 25 July 1995, stated that the Lašva river valley investigation was "making good

progress and that the indictment or indictments which will flow from this investigation will be issued and made public before the end of the year".

9. Sikirica (Keraterm camp) indictment

67. On 26 June 1995, the Prosecutor submitted an indictment to the Registrar charging the Commander of the Keraterm camp, Duško Sikirica, with genocide. Sikirica and 12 subordinates or others subject to his authority were also charged with crimes against humanity, violations of the laws or customs of war and grave breaches of the Geneva Conventions. Sikirica and the others named in the indictment were accused of killing, sexually assaulting and torturing detainees of the Keraterm camp, a detention facility located in the Prijedor region and a centre of a Bosnian Serb ethnic cleansing campaign during the summer of 1992. The indictment was submitted following further investigations into the alleged crimes which occurred in the Prijedor region and parallels earlier indictments against 21 persons, including Tadić, discussed above. On 21 July 1995, Judge Vohrah confirmed the indictment and issued warrants of arrest against each accused.

10. Miljković and others (Bosanski Šamac) indictment

68. On 29 June 1995, the Prosecutor submitted an indictment to the Registrar against six persons charging them with grave breaches of the Geneva Conventions, violations of the laws or customs of war and crimes against humanity for their alleged role in coordinating and waging a campaign of terror against the non-Serb civilian population in Bosanski Šamac, a municipality located in the Posavina corridor in northern Bosnia.

69. The indictment contains 56 separate charges, involving murder, forced deportation and transfer, sexual assault and torture. The accused include Blagoje Simic who, as President of the local Serbian Democratic party and the Deputy of the regional Bosnian Serb assembly, was the highest-ranking civilian official in Bosanski Šamac; Stevan Todorović, the chief of police; Simo Zarić, organizer and leader of a local military force; and Slobodan Miljković, who is accused of involvement in mass killings, three individual murders and seven cases of beating. On 21 July 1995, Judge Vohrah confirmed the indictment and issued warrants of arrest for each accused.

11. Jelisić and Češić (Brčko) indictment

70. On 30 June 1995, the Prosecutor submitted an indictment against Goran Jelisić ("Jelisić") and Ranko Češić ("Češić") for their alleged crimes against Muslim and Croat detainees during the summer of 1992 at the Luka camp of Brčko, a municipality located in the Posavina corridor in northern Bosnia.

71. Charged with genocide, crimes against humanity, violations of the laws or customs of war and grave breaches of the Geneva Conventions, Jelisić, who allegedly referred to himself as the "Serb Adolf", is accused of being one of the commanders responsible for running the Luka camp and is accused specifically

of 16 murders and numerous beatings. Češić, charged with crimes against humanity, violations of the laws or customs of war and grave breaches of the Geneva Conventions, is accused of 13 murders and one sexual assault. On 21 July 1995, Judge Vohrah confirmed the indictment and issued arrest warrants for the accused.

12. Martić indictment

72. On 24 July 1995, the Prosecutor submitted an indictment to the Registrar against Martić, the President of the self-proclaimed Republic of Serbian Krajina. Charged with violations of the laws or customs of war, Martić is accused of ordering the cluster-bomb rocket attack against the civilian population of Zagreb in early May 1995 which killed at least five civilians and injured numerous others. Judge Jorda confirmed the indictment and issued a warrant of arrest on 25 July 1995.

73. The five indictments confirmed by the Chambers on 21 July 1995 and 25 July 1995 bring to 46 the number of individuals accused of serious violations of international humanitarian law by the Office of the Prosecutor during its first year of operation.

D. The Prosecutor's dual role: the former Yugoslavia and Rwanda tribunals

74. Acting under Chapter VII of the Charter of the United Nations, the Security Council, by its resolution 955 (1994) of 8 November 1994, decided to establish an international tribunal for the sole purpose of prosecuting persons responsible for genocide and other serious violations of international humanitarian law committed in the territory of Rwanda and Rwandese citizens responsible for genocide and other such violations committed in the territory of neighbouring States between 1 January and 31 December 1994. Under the statute of the International Tribunal for Rwanda, the Prosecutor of the International Tribunal for the former Yugoslavia also serves as the Prosecutor of the International Tribunal for Rwanda.

75. The seat of the Rwanda Tribunal is in Arusha, United Republic of Tanzania, while the investigative operations of the Office of the Prosecutor are conducted primarily from Kigali, Rwanda. Several members of the Prosecutor's secretariat provide support for the Rwanda Tribunal. All the organs of the Tribunal have assisted in the early stages of the Rwanda Tribunal's establishment, for example, hosting the first plenary session of the judges of the Rwanda Tribunal in The Hague which elected a President and Vice-President and adopted rules of procedure and evidence for the Rwanda Tribunal.

III. THE REGISTRY

76. The Registry is one of the three constituent organs of the Tribunal. It performs essential functions, some of which would be considered unusual for the registry of a national court or conventional international court. Pursuant to

article 17 of the statute, it is responsible for the Tribunal's administration but also for setting up the infrastructure required to ensure the proper functioning of the judicial process in a particularly sensitive and important area of criminal law. It is for this reason that the Registry comprises two distinct departments: judicial (paras. 77-117), and administrative (paras. 118-123).

A. Judicial department

77. Guided only by the Tribunal's rules of procedure and evidence, which remain largely untested, the judicial department has had to be creative in shaping the judicial infrastructure of the Tribunal. Such precedents as exist in national law have required radical reworking to be of any use. Moreover, the Tribunal, because of its international role, must perform tasks and overcome problems more varied and more complex than those found in national courts.

78. Under the rules, the Registry is also required to serve as the Tribunal's channel of communication. The important international role of the Tribunal and the decisive resonance of its indictments make this communication function an especially sensitive one. In addition to the dissemination of information to the general public, the Registry is responsible for the service of Tribunal documents on individuals via States and de facto authorities. This can on occasion pose considerable difficulties, as set out in paragraphs 91 to 93 below.

79. The Registrar is also responsible for assisting victims and witnesses. The rules call for the setting up of a Victims and Witnesses Unit to "recommend protective measures" and "provide counselling and support", especially in rape or sexual assault cases. The Unit has now been established and its operations are described in detail in paragraphs 108 to 117 below.

80. The Registry is further responsible for overseeing the custody and movement of all accused following their arrest. In concert with the various authorities concerned, it arranges the transfer of the accused to The Hague. This may be a very complex operation as the Tribunal does not have police powers and cannot perform these tasks itself.

81. The management of the Tribunal's detention facilities is another of the Registry's responsibilities. Finally, the Registry regulates and administers the assignment of counsel to indigent accused.

1. Court management

82. At the judges' request, the Registry has drafted judicial forms, produced a practitioner's manual and an internal directive for the Registry's use.

(a) Judicial forms

83. Some 50 judicial forms have been compiled by the Registry. While benefiting from a review of national models, these forms reflect the unique international character of the Tribunal's proceedings.

(b) Practitioner's manual and internal directive for the Registry

84. The Registry has drawn up a practitioner's manual, which is a guide to the Tribunal to assist those involved in proceedings, in particular defence counsel (see para. 128).

85. The directive on the Registry provides instructions on the classification and registration of documents, as well as information about the maintenance of a record book accessible to the public and about communications with United Nations organs and States.

(c) The organization of trials and other hearings

86. The rules provide that the Registry is responsible for the organization of trials and other hearings.

87. Since the Tribunal's activities are of general public interest, it has been decided that, subject to the unfettered discretion of the Chambers in each case, public and media access to hearings should be as liberal as possible. Prior to each hearing, available seats are allocated to the public and press.

88. Two matters have been of particular concern to the Registry: security during hearings, and the organization of the proceedings. In order to set up the requisite infrastructure in a relatively short time, a working group composed of a representative of the judges, a member of the Office of the Prosecutor and several members of the Registry has been established and meets regularly.

(i) Security measures

89. In relation to the security standards of the Tribunal, the Registry works in close cooperation with the Netherlands police, who are responsible for maintaining law and order outside the precincts of the Tribunal. The Registry has many responsibilities in this area: transfer of the accused, safety of victims and witnesses, security of all other persons attending hearings. The performance of security checks upon persons entering the courtroom is of critical importance.

(ii) Courtroom proceedings

90. The organization of hearings is affected by two unusual features of the Tribunal: its use of several languages and of audiovisual equipment. Simultaneous interpretation is necessary during hearings because the Tribunal has two working languages, French and English. Bosnian, Croatian or Serbian may also be used by victims, witnesses and accused. Accordingly, provision has had to be made for simultaneous interpretation and for extensive translation

facilities. The need for highly sophisticated technology to provide a simultaneous transcript, a visual record of the proceedings and a means of transmitting the evidence of witnesses while, where necessary, protecting their identities, has led the Tribunal to make use of the services of specialized stenotypists and technical staff.

(d) Transmission of warrants of arrest

91. This has in some instances proved a delicate and difficult task. An example is provided by the two indictments confirmed in February 1995, charging 21 individuals with crimes in the Omarska camp in Bosnia and Herzegovina which was in the control of the Bosnian Serb authorities. Arrest warrants were issued for each of the accused. The Tribunal's rules provide that "a warrant for the arrest of the accused and his surrender to the Tribunal shall be transmitted by the Registrar to the national authorities of the State". The Prosecutor believed that the accused were in that part of the territory of the Republic of Bosnia and Herzegovina under Bosnian Serb control based in Pale. The Registrar transmitted the warrants to the legal authorities of the Republic of Bosnia and Herzegovina, who were willing to cooperate with the Tribunal. The Tribunal's rules, as now amended (see para. 23 above), make it possible to transmit judicial acts to entities which are not States and so the Registrar also sought to transmit those arrest warrants to the Serb administration in Pale, which was thought more likely to be able to arrest the accused. However, the Registry ran into several problems. How does one go about communicating with an entity that has no official representation? How does one transmit documents to an entity that has no desire to receive them?

92. The Registry initially turned to UNPROFOR, asking it to transmit the warrants to the Pale authorities, but UNPROFOR refused to undertake that task. The Registrar then made contact with the representatives of the Pale authorities in Geneva, but they refused to accept the warrants. Ultimately, a month after their issuance, the "Office of the Serb Republic" (Pale) situated in Belgrade agreed to take the warrants, but would give no assurance as to their actual transmission to the accused. Since then, that Office has not even replied to further requests by the Registry for transmission of official documents.

93. Some useful conclusions may be drawn from the Registry's practical experience in respect of the transmission of judicial documents. First, it should be noted that the cooperation of States - an obligation under the statute - begins with their willingness to receive the Tribunal's official documents. Secondly, any attempt to deal with non-State entities is only worthwhile where it is possible to apply sanctions to them in the event of non-cooperation, in the same way that sanctions can be applied to non-cooperative States. If that is not possible, then it may be that the Tribunal should only maintain contacts with recognized States of the former Yugoslavia, i.e., the Republic of Bosnia and Herzegovina, the Republic of Croatia or the Federal Republic of Yugoslavia (Serbia and Montenegro) (in which the Pale administration has a representative). By adopting this approach, the Tribunal could avoid any controversy as regards the legal effect of transmitting or attempting to transmit an official document to a non-State authority. The danger of fuelling a controversy of this kind has not so far been offset by any enhanced effectiveness in implementing the Tribunal's decisions.

2. The accused

(a) Defence counsel

94. Articles 18 and 21 of the statute entitle suspects or accused to, inter alia, legal assistance of their own choosing or, if indigent, to free legal assistance. The Tribunal's rules give effect to this right and place the responsibility for providing and regulating what is, in effect, a complete legal aid system upon the Registrar.

95. The Registrar has accordingly set up a list of counsel who have volunteered to represent indigent suspects or accused and who meet the requirements of the rules. So far, 30 lawyers appear on the list. They include practising lawyers and professors from Australia, Canada, Croatia, the Federal Republic of Yugoslavia (Serbia and Montenegro), France, Italy, the Netherlands, New Zealand, Switzerland, the United Kingdom and the United States.

96. The Registrar has prepared, in close consultation with the judges and lawyers from different bar associations, a directive governing the procedure for assignment of defence counsel, the status and conduct of assigned counsel, the calculation and payment of fees and disbursements and the establishment of an advisory panel. The accused Tadić has availed himself of this procedure.

97. The advisory panel is a consultative body composed of two counsel drawn by lot from those whose names appear on the above list of counsel and also four lawyers proposed by the International Bar Association and the Union Internationale des Avocats. The panel is presided over by the president of the Nederlands Orde van Advokaten (the Dutch Bar Association).

98. The Registry has also prepared a Manual for Practitioners, containing practical information for defence counsel, to provide basic orientation and advice for defence practitioners who will appear before the Tribunal (see para. 84 above and para. 128 below).

(b) Detention facilities

(i) Rules of detention and regulations

99. The rules governing the detention of persons awaiting trial or appeal before the Tribunal ("Rules of Detention"), which were adopted by the Tribunal at the end of its third session on 5 May 1994, put in place a regime for detainees while they are held at the Tribunal's detention unit. These rules govern a unique situation: for the first time in history, accused persons are to be held in a special detention unit administered not by national rules of detention - military or civilian - but by a system of international standards created specifically by the international body before which they will be tried.

100. When drafting the rules of detention, the Tribunal took into account the existing body of international standards created by the United Nations as a set of basic guidelines for States. It thus drew upon the 1977 United Nations Standard Minimum Rules for the Treatment of Prisoners, the 1988 Body of Principles for the Protection of All Persons under Any Form of Detention or

Imprisonment and the 1990 Basic Principles for the Treatment of Prisoners. The Tribunal also took into account, wherever possible, the standards set out in the European Prison Rules which were issued by the Council of Europe in 1987.

101. Chief among the rights guaranteed to a detainee is the absence of discrimination on any ground. Each detainee also has the right to observe and practise his religious or moral beliefs. A detainee is entitled to receive a copy of the rules of detention and the regulations in his own language, together with other information to enable him to understand his rights and obligations while in the detention unit.

102. Matters covered by the regulations, referred to in paragraph 29 above, include a complaint procedure, disciplinary rules and a detainee's entitlements regarding communication by telephone, mail and personal visits.

(ii) The Detention Unit

103. The Detention Unit was constructed for the Tribunal by the Government of the Kingdom of the Netherlands. The premises of the Detention Unit have been leased to the Tribunal, and the Detention Unit itself was built to accommodate the Tribunal's specific needs. A Commanding Officer has been appointed and necessary staff have been loaned by the Government of the Netherlands. Currently the Unit houses one detainee, Tadić, whom the German authorities surrendered to the Tribunal in April 1995.

104. The Netherlands prison administration has a number of responsibilities, ranging from practical matters, such as the provision of food and laundry and medical services, to more substantive issues, such as complaints against a decision affecting a detainee taken by the Governor of the host prison. The areas of responsibility of the Tribunal and of the Netherlands prison administration are closely coordinated, and care has been taken to ensure that the two systems are compatible on a day-to-day basis. The Commanding Officer of the Detention Unit and the Governor of the host prison are expected to be in constant communication with each other.

105. To ensure order and security in the Detention Unit, the Commanding Officer may take appropriate measures on the basis of the rules of detention and the regulations. For example, visitors are required to undergo searches of clothing and possessions.

(iii) Inspecting authority

106. The rules of detention provide for "regular and unannounced inspections by inspectors whose duty it is to examine the manner in which detainees are treated", and for a competent authority to be appointed to inspect the Detention Unit regularly and to advise the Commanding Officer and Registrar on the treatment of detainees. As noted in paragraph 28 above, the International Committee of the Red Cross has agreed to act in this capacity.

107. In addition to the ICRC inspections, the rules of detention provide that the Bureau of the Tribunal may, at any time, appoint a judge or the Registrar of the Tribunal to inspect the Detention Unit and to report to the Tribunal on the

general conditions or on any particular aspect of the implementation of the rules of detention.

3. Victims and Witnesses Unit

108. The Victims and Witnesses Unit, which became operational in April 1995 after a period of preparation and consultation, has started work to design and establish a programme of care and support for, as well as protection of, witnesses who will testify before the Tribunal. The Unit, which is part of the Registry, provides these services impartially for both prosecution and defence witnesses. It will apply the highest standards of confidentiality in its work. The Unit is seeking to overcome current problems of understaffing and lack of adequate funds.

109. The Unit is the first of its kind in any international context. It is an expression of the profound concern felt by the Security Council and by the Tribunal itself about the special problems faced by people who have witnessed or suffered from the traumatic events that have taken place, and continue to take place, in the former Yugoslavia. The Tribunal recognizes that, in giving testimony before it, victims and witnesses will have to relive their experiences in a country far away from their own and without the support from relatives and friends which they would normally receive if testifying in an ordinary court of law in their own country, in time of peace. Some may be anxious about reprisals.

110. The Victims and Witnesses Unit was established in an attempt to alleviate these anxieties as far as possible and to create an environment for victims and witnesses in which they can give their testimony with dignity and in safety. The Unit believes that the act of giving testimony by victims and witnesses is important, not only to ensure that justice is done in the former Yugoslavia, but also as a means to assist them in the long process of coming to terms with major traumatic events in their lives.

111. The Coordinator of the Unit has identified suitable candidates for a team which will comprise a small staff of specialists. One candidate has already been recruited. The staff will be experienced in providing psychological, practical and legal support to victims and witnesses and will liaise with experts, identified by the Unit, who can respond to their specific needs. The staff will include several women. Some Dutch NGOs have given helpful advice to the Unit as it develops this network of contacts and specialists. Other NGOs, partially funded by the European Commission, have volunteered to provide specialist support, including counselling for victims of rape and sexual assault.

112. Once the support framework for witnesses in The Hague has been further developed, the Unit will extend its contacts with relevant organizations and professionals in the countries where the witnesses reside to help and support them before and after giving testimony. In all contacts with outside organizations and experts the Unit insists on the need for absolute confidentiality. To emphasize the impartial nature of its work and its

independence from both prosecution and defence, the Unit will employ its own interpreters.

113. Most of the Unit's initial efforts have been spent in making preparatory arrangements for witnesses' travel to, and safe stay in, The Hague.

114. In all its work, the Unit is impartial and conscious of the need to maintain a strict separation between witnesses for the defence and those for the prosecution. Not only will prosecution and defence witnesses be housed in separate accommodation, but there will also be two separate waiting-rooms for them.

115. It is important for witnesses to have basic information about testifying before the Tribunal, and what it involves. The Unit has therefore produced a leaflet which explains the work of the Tribunal and the Unit and provides information about trial procedures and the plans for witnesses' travel and stay in the Netherlands. Conscious of the need to provide emotional support, the Tribunal is favourably considering requests by witnesses to be accompanied by a close relative or friend.

116. In formulating its policy for witness support and protection, the Unit applies relevant United Nations standards. Thus the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power formed the basis for the decision to offer witnesses appropriate reimbursement for necessary expenses, including child care during the period they give testimony.

117. Protecting witnesses against possible physical attacks is a major concern of the Unit, which has sought and received expert advice on this matter. The Tribunal does not have its own protection force, but relies on Governments to provide such protection to witnesses whose security is deemed to be at risk. The Unit has requested cooperation from a number of Governments in this regard, pointing to their obligation to cooperate fully with the Tribunal and its organs, but few offers of cooperation have been received so far.

B. Administration

118. Following the decision of the General Assembly in its resolution 48/251 of 14 April 1994 in which the Assembly, inter alia, authorized the Secretary-General to enter into further commitments not exceeding US$ 11.0 million, administrative activities centred on the speedy establishment of the infrastructure to enable the Tribunal to become operational as soon as possible.

119. By the end of 1994, more than 100 personnel had been recruited, in addition to about 30 experts-on-mission loaned by various governments to the Office of the Prosecutor. Related administrative support services had to be established and rendered effective with the same speed as the recruitment of personnel. As of the end of June 1995, 174 personnel, representing 27 nationalities, had been recruited or offered appointments with the Tribunal, in addition to about 35 experts-on-mission and 15 legal assistants provided from extrabudgetary resources.

120. In the period under review, the Registry has provided vital services to investigators in the Office of the Prosecutor, including a pool of translators and interpreters and a travel unit. It has been involved in organizing the construction of the courtroom and visitors' gallery, the special passageways and holding cells and other structural modifications to the Tribunal's premises. More than $2.5 million worth of electronic data-processing equipment and accessories have been installed. In October 1994, the Government of the Kingdom of the Netherlands conveyed a 24-cell detention facility to the Tribunal, with internal and external security systems fully functional.

121. Based on the experience gained during the latter half of 1994, revised financial requirements were submitted by the Secretary-General in December 1994, pursuant to General Assembly resolution 48/251, as well as a report on the conditions of service and other allowances of the members of the Tribunal. The revised estimates amounted to $39.1 million for the biennium 1994-1995 and included proposals for a total of 260 posts and related requirements.

122. The Advisory Committee on Administrative and Budgetary Questions completed its review of the revised estimates in March 1995. In considering the report of the Secretary-General on the financing of the Tribunal and the related report of the Advisory Committee, the General Assembly affirmed that the Tribunal needed to be assured of secure and stable financing in order to fulfil its role fully and effectively. In the summer of 1995, following intensive negotiations between Member States, an agreement was reached on the financing of the Tribunal which was subsequently adopted by the General Assembly as resolution 49/242 B of 20 July 1995. Under the resolution, the General Assembly decided to appropriate $39,095,900 (net) to the Special Account for the Tribunal for the period from 1 January 1994 to 31 December 1995.

123. Despite the initial problems regarding its financing, the Tribunal has continued its working momentum. The translation unit continues to expand in order to keep up with the demands of investigatory work. Unforeseen requirements continue to be dealt with by applying the flexibility of the financial authority granted to the Secretary-General and in a manner consistent with the Financial Regulations and Rules of the United Nations. The longer-term implications of the work of the Tribunal are being dealt with in the context of the proposed budget for the biennium 1996-1997, to be submitted by the Secretary-General to the General Assembly at its fiftieth session.

C. Publications

124. In the period covered by the present report, the Tribunal has issued a number of publications, including the Tribunal Handbook, the Yearbook and the Manual for Practitioners. Each is available in both of the working languages of the Tribunal. The Tribunal is currently exploring the possibility of making its public documents available on-line through the Internet.

1. The Tribunal Handbook

125. The Tribunal Handbook, now in its second edition, is a compilation of the Tribunal's basic texts. It is intended to provide the reader with a comprehensive set of materials on the structure and functioning of the Tribunal and contains a detailed index.

2. The Yearbook

126. The Yearbook documents the activities of the Tribunal on an annual basis. The inaugural issue of the current volume, however, includes developments which occurred in 1994 as well as part of 1993. The purpose of the Yearbook is to provide readers with a means of keeping abreast of the activities of the Tribunal. Thus, it provides a description of the current activities of the Tribunal's three organs, and includes copies of the various judicial orders issued. This year's volume also describes the development of the Tribunal's infrastructure, such as the building of the courtroom, and the amendments to the rules.

127. The Yearbook also includes a section on the cooperation of States, both as regards implementation of the Tribunal's statute and offers made by States to hold convicts serving sentences imposed by the Tribunal in their prisons. Copies of national legislation implementing the Tribunal's statute are included, both in their original texts and in unofficial English translations. In addition, the Yearbook contains a copy of the most significant documents produced within the period covered, which in the current volume includes the first annual report, the President's address to the General Assembly and the speech delivered by the Secretary-General during his visit to the Tribunal. A list of other official documents available to the public is included. Finally, in an attempt to assist the reader with further research, a bibliography of articles concerning the Tribunal is provided.

3. The Manual for Practitioners

128. The Manual for Practitioners comprises a set of guidelines produced by the Registry to assist defence counsel appearing before the Tribunal. It provides basic orientation and information regarding the details of the Tribunal's procedure. It is intended to offer practical guidance to those who will appear before the Tribunal, and the information is therefore arranged in the order in which it would typically be needed. It contains information regarding the qualifications and procedures relevant to representing an accused, as well as information on courtroom protocol and provisions for communication with accused and witnesses. It also describes the Tribunal's procedure in broad terms. It was thought that such a manual was particularly necessary as the Tribunal is an international judicial organ and many of the details of its procedures differ therefore from those of the municipal systems with which defence counsel would typically be acquainted.

Part two

ACTIONS OF STATES

IV. ENACTMENT OF IMPLEMENTING LEGISLATION

129. For its day-to-day operations, the Tribunal operates under the assumption that States will provide their full and unreserved cooperation. Unlike domestic criminal courts, the Tribunal has no enforcement agencies at its disposal: it cannot execute arrest warrants, nor can it seize evidentiary material, compel witnesses to give testimony or search the scenes where crimes have allegedly been committed. For all these purposes, the Tribunal must turn to State authorities and request them to take action. Thus, it can only work to the extent that States are ready and willing to cooperate. The adoption by States of all the legislative, administrative and judicial measures necessary for the expeditious implementation of the Tribunal's orders is therefore of crucial importance.

130. The Security Council, in its resolution 827 (1993) of 25 May 1993, stipulated that "all States shall cooperate fully" with the Tribunal and its organs and "shall take any measures necessary under their domestic law to implement the provisions" of the statute and comply with "requests for assistance or orders issued by a Trial Chamber" (para. 4). The statute established in article 29 the principle of cooperation between States and the Tribunal "in the investigation and prosecution of persons accused of committing serious violations of international humanitarian law". Rule 58 restates this principle and confirms that the obligations on States stemming from the statute "shall prevail over any legal impediment to the surrender or transfer of the accused to the Tribunal which may exist under the national law or extradition treaties of the State concerned".

131. In the first year of the Tribunal's existence, the President of the Tribunal drew the attention of the Secretary-General to the necessity for Member States not only to designate, in their domestic legal systems, a body responsible for dealing with any request from the Tribunal, but also to adopt the legislative or regulatory provisions required to give effect to the Tribunal's statute. Subsequently, the President sent letters to the representatives of Member States in which he stressed the importance of the provisions relating to the transfer of suspects and accused and called upon States not to apply to such transfer, by analogy, existing legislation or bilateral conventions governing extradition.

132. By the end of 1994, Finland, Italy, the Netherlands, Norway, Spain and Sweden had enacted implementing legislation, while Denmark, France, the Republic of Bosnia and Herzegovina, Germany, Australia and New Zealand followed suit in the course of 1995.

133. The following States have indicated their intention to adopt such legislation in the near future and some of them have communicated to the Tribunal a general outline of the draft text currently under consideration: Austria, Sri Lanka, Switzerland, Turkey, the United Kingdom and the United States (the United States has already signed a specific Agreement with the

Tribunal on the surrender of persons, but the Agreement itself requires implementing legislation).

134. In an attempt to assist Member States which had indicated their intention to adopt legislation in the near future and other States which had not yet undertaken any action, the President sent a note on 15 February 1995 to the representatives of those States, with two annexes: one containing a compilation of all national legislation that had been adopted or drafted by that time and the other a set of guidelines for the implementation of Security Council resolution 827 (1993). Those guidelines were drafted by the Registry at the request of the President for States which had not yet adopted implementing legislation, and indicated the areas of national law that might need to be revised.

V. ENFORCEMENT OF SENTENCES

135. Article 27 of the statute of the Tribunal prescribes that imprisonment imposed by the Tribunal on a convicted person shall be served in a State designated by the Tribunal from a list of States which have indicated to the Security Council their willingness to accept convicted persons.

136. In the report on the statute of the Tribunal presented by the Secretary-General to the Security Council (S/25704 and Corr.1 and Add.1), it was suggested that the Security Council would make appropriate arrangements to obtain from States an indication of their willingness to accept convicted persons. This information would be communicated to the Registrar of the Tribunal who would prepare a list of States in which the enforcement of sentences would be carried out.

137. In a letter dated 23 September 1994 (S/1994/1090), the President of the Security Council requested the Secretary-General to assist the Council in obtaining such indications from States. As a result of that request, a note was sent out by the Secretary-General on 4 October 1994 inviting all States Members of the United Nations (and Switzerland) to indicate whether they would be prepared to carry out the enforcement of prison sentences pursuant to article 27 of the statute of the Tribunal.

138. To stress the urgent need for cooperation and attention to the matter, the President of the Tribunal and the United Nations Office of Legal Affairs decided that a second letter should be sent. That letter was sent by the President on 7 December 1994 to the representatives of 35 States. A favourable response was received only from Pakistan, Bosnia and Herzegovina, Norway, Germany, Finland and the Islamic Republic of Iran. The majority of Member States did not express an eagerness to assist: most States simply did not respond, many said they were unable to help, some indicated they were not yet in a position to respond and others indicated a willingness to assist only if their own nationals or residents were convicted.

139. As a result of that response, the fifth plenary session of the Tribunal approved a draft letter to follow up the President's letter of 7 December 1994. The new letter, sent out by the President on 3 February 1995, proposed a less

taxing commitment for the States that had expressed a lack of willingness to carry out enforcement of prison sentences pursuant to article 27 of the statute of the Tribunal. The States were requested to consider options where the commitment would either be limited in time or by the number of prisoners per year. So far, only a few States have responded to the new request; unfortunately, none have reacted positively to it.

VI. VOLUNTARY CONTRIBUTIONS

A. States

1. Cooperation of the host State

140. Since its establishment, the Tribunal has received continuous support from the Netherlands authorities, in particular the Ministry of Foreign Affairs; the Ministry of Public Health, Welfare and Sports; the Ministry of Interior; the Netherlands Federal Building Service; and the Ministry of Justice. In the past year, the Netherlands authorities have been particularly helpful with their assistance in matters of security.

141. Under the professional guidance of the Netherlands Federal Building Service, the main part of the reconstruction of the Tribunal's premises has been completed. At the request of the Tribunal, an additional sum was made available by the Ministry of Foreign Affairs for the construction of the fence surrounding the premises of the Tribunal.

142. For the transport of an accused from Germany to the Netherlands, the Ministry of Justice, in close cooperation with the German authorities and the Tribunal, conducted a very successful operation in delivering him safely to the United Nations Detention Unit in Scheveningen.

143. On the days of public hearings when an accused is present, the Tribunal receives continuous support from various Netherlands security forces to maintain security outside the premises of the Tribunal, to safely transport the Judges and the Prosecutor, if necessary, and to arrange the safe transport of the accused between the Detention Unit and the premises of the Tribunal.

144. Finally, the Victims and Witnesses Unit has had extensive contacts with representatives of various Netherlands ministries.

145. All the above-mentioned activities have placed a considerable financial burden on the various Netherlands ministries. The Tribunal wishes to express its deep gratitude for this continuous support from the Netherlands Government and is confident that it may continue to count on its support in the future.

2. Seconded personnel

146. Several States have contributed assistance to the Tribunal in the form of a loan of personnel to the Office of the Prosecutor. As of 29 May 1995, the Tribunal was receiving seconded personnel from the following States: United

States (21 personnel); United Kingdom (5); Netherlands (3); Denmark (2); Norway (2); Sweden (2).

3. Monetary contributions and contributions in kind

147. In its resolution 47/235 of 14 September 1993, the General Assembly invited Member States and other interested parties to make voluntary contributions to the Tribunal in cash and in the form of services and supplies acceptable to the Secretary-General.

148. As of 10 July 1995, the following countries had contributed funds totalling $6,319,795 in support of the Tribunal:

	$
Cambodia	5 000
Canada	339 482
Chile	5 000
Denmark	183 368
Hungary	2 000
Ireland	21 768
Israel	7 500
Italy	1 898 049
Liechtenstein	2 985
Malaysia	2 000 000
Namibia	500
New Zealand	14 660
Norway	50 000
Pakistan	1 000 000
Spain	13 725
Switzerland	75 758
United States	700 000

149. Furthermore, Norway has pledged to contribute an additional $130,000 to the voluntary funds.

150. In addition, the United States made a contribution of computer systems and related services for the Office of the Prosecutor valued at up to $2,300,000. The United Kingdom has also made a contribution of equipment valued at approximately $30,500.

B. Intergovernmental organizations

151. The European Union made a valuable contribution to the work of the Tribunal by providing financial resources for several projects of NGOs that aim to assist the work of the Tribunal. These projects include the secondment of 15 legal assistants to the Registry and judges for research and legal support, which has

proved of crucial value to the substantive work of the Tribunal. Another project involves assistance to victims and witnesses.

Part three

THE ROLE OF THIRD PARTIES

VII. CONTRIBUTIONS BY NON-GOVERNMENTAL ORGANIZATIONS

152. Since the summer of 1994, more than 100 non-governmental organizations have offered the Tribunal their help in a wide range of areas. The Tribunal appreciates all of these offers and welcomes such cooperation. It must be emphasized, however, that the partnership between the Tribunal and NGOs can operate only within the rules laid down by the Tribunal and in accordance with its statute. In order not to disrupt the proper administration of justice, it is essential for NGOs not to lose sight of the Tribunal's imperatives in respect of confidentiality and impartiality.

153. Non-governmental organizations have been in the former Yugoslavia from the onset of the conflict; they have a large amount of information and a knowledge of the field that may be precious to the Tribunal. They might accordingly help the Tribunal's activities by: (a) providing the Prosecutor with information useful for investigations; (b) assisting the Victims and Witnesses Unit; (c) providing legal and technical support; and (d) making the Tribunal's activities more widely known.

A. Non-governmental organizations as sources of information for the Office of the Prosecutor

154. Non-governmental organizations which have been in the former Yugoslavia since the outbreak of hostilities have played an important part in gathering information about serious violations of human rights and humanitarian law. Considerable quantities of testimony have been received by NGO staff in the course of their work in the field, often gathered before the Tribunal's establishment. In general, NGOs have promoted and endorsed the establishment of the Tribunal. By making their information available to the Tribunal, many NGOs contributed significantly to the opening of investigations.

155. The present cooperation between the Tribunal and NGOs is consistent with the Prosecutor's judicial strategy. NGOs working with refugees who are victims of the conflict can make the Tribunal more widely known and can provide those refugees with information and help them to contact investigators. They may also assist the Office of the Prosecutor by enabling victims and witnesses to be identified and located. However, the need for confidentiality in criminal proceedings has to be borne in mind, as well as the adverse effect on witnesses and victims of repeated questioning.

156. NGOs specializing in observing trials and judgements may attend certain national trials of relevance for the Prosecutor and provide him with reports on the proceedings.

B. Assistance to victims and witnesses

157. NGOs are very often the first organizations to be in contact with victims and witnesses. They can assist them not only with regard to legal problems, but more generally by furnishing them with material, medical, psychological or technical support.

158. The Victims and Witnesses Unit has requested specific organizations with relevant expertise to provide psychological, medical and other support to victims and witnesses, whether appearing for the defence or for the prosecution. As an independent and impartial institution, the Tribunal expects that NGOs will fully respect the judicial principle that nothing should be done to influence the witnesses at any stage of the proceedings.

C. Legal and technical support

159. NGOs may also assist the Tribunal by providing it with the findings of specialized studies or research into specific problems relevant to the Tribunal. For example, some of the comments made by NGOs when the rules of procedure and evidence were revised were most helpful.

160. Since January 1995, a team of 15 legal assistants has been made available to the Tribunal by the European Union through the intermediary of an NGO. Working full-time either in the Registry or with the judges, these assistants are making a substantial contribution to the Tribunal's activities.

D. Public relations

161. NGOs have also assisted the Tribunal by making its activities better known and better understood in the region of the former Yugoslavia as well as in the rest of the world.

VIII. THE TRIBUNAL AND WORLD PUBLIC OPINION

162. The present report covers the first year of operation of the Press and Information Service, which was established in June 1994 by a decision of the third plenary session of the judges. The judges realized that the institutional setting-up period of the Tribunal had almost been completed and that the Tribunal would generate continuous curiosity as soon as its operational phase began. Today, the Press and Information Service is the focal point of a network linking the Tribunal to 332 news agencies and to 344 outside contacts such as embassies, NGOs, universities, researchers and legal specialists.

163. Over the past year, the image of the Tribunal in the world media has evolved significantly: quantitatively, the visibility of the institution has greatly increased, and qualitatively, the credibility of its activities has been significantly enhanced.

1. Increased visibility

164. Media coverage of the Tribunal did not initially occupy newspaper front pages. Since the summer of 1994, however, as a result of the first investigations, the publication of the first indictments and the subsequent involvement of the Trial Chambers in the first legal proceedings, media coverage has become more regular.

(a) Increasing publicity

165. Between July 1994 and mid-May 1995, about 600 press articles devoted to the Tribunal were published, as counted by the internal press review section. The list, of course, is not exhaustive since the section did not have access to all publications. Furthermore, the figure does not take into account the many reports broadcast on radio and television worldwide.

166. This publicity results both from spontaneous interest and from the Tribunal's own advance planning, which used every traditional forum to support the existence of an institution as unique and novel as the Tribunal and to publicize its activities:

- 137 meetings with individual journalists were organized;
- 24 press releases were issued;
- 8 press conferences were called;
- A professionally equipped press room was set up;
- Regular organization of a weekly press meeting was initiated by the spokesperson.

(b) Greater geographic coverage

167. The increase in the number of articles devoted to the Tribunal has been accompanied by a concomitant geographical diversification. The North American and European media were the first to focus their sights on The Hague. During the last quarter of 1994, they were joined by some of the media from South America, Asia, Australia and Africa. More recently, two Russian press services as well as the Hungarian and Czech news services have begun to follow Tribunal activities very closely.

168. Also significant is the fact that, beginning in early spring 1995, the media of the former Yugoslavia came onto the scene. Although sporadic relations with some of the wire services, as well as with some daily newspapers in Belgrade and Zagreb, had been established at the outset, it had proved very difficult to establish a truly reliable network of contacts with media from the region most affected by the Tribunal's activities. The publication of 21 indictments in February 1995 and the two deferral hearings in May 1995 altered the situation dramatically. Today, RTV Bosnia, the official news service Tanjug and private radio stations from Croatia are among those regularly requesting information.

169. The increased number of articles devoted to the Tribunal was also accompanied by a significant change in the tone of their content as regards the intrinsic interest in its existence and possible scope of its activity.

2. Increased credibility

170. A broad reading of the many articles specifically or indirectly related to the Tribunal shows that its institutional image and the reflection of its judicial activity evolved over three distinct periods.

(a) Initial scepticism

171. The regulatory activities of the judges during the first half of 1994, which for journalists were overly technical and which held little meaning among the general public, together with the preparatory work of the Deputy Prosecutor, which appeared dry work, were not initially helpful to the Tribunal when it came to overcoming the scepticism expressed throughout the first months of its existence. In addition, during the summer of 1994 its image suffered greatly owing to the absence of a Chief Prosecutor, investigators and an adequate budget.

172. Within this context, it would be an understatement to say that the appointment of the Honourable Richard Goldstone as Prosecutor on 8 July 1994 at the end of what The New York Times the next day called "a frustrating year" was greeted with obvious relief and was widely disseminated. The Prosecutor's first press conference, held on 21 July 1994, marked a turning-point. His determination was further strengthened by the announcement at the end of July 1994, after the judges' fourth plenary session, that the Tribunal would enter its operational phase in the autumn.

173. Seen from this perspective, several newspapers next began to publish general articles introducing the Tribunal or making sympathetic comments about its work.

174. None the less, despite good will granted to the Tribunal, a degree of incredulity still remained. Publication of the first indictment (Nikolić) and the first public hearing (Tadić deferral) at the beginning of November 1994, however, marked two decisive steps forward.

(b) The period of impatience

175. The Tribunal, however, was cautioned as to the striking lack of results it had produced when the American news service Scripps Howard distributed a particularly vituperative article which appeared as far away as Pakistan on 5 January 1995. A second warning shot was fired a few weeks later by an article appearing in the Netherlands on 28 January 1995.

176. The same impatience was expressed by the judges, whose final statement published after the fifth plenary session was the inspiration for an article on 2 February 1995 in Le Monde under the eloquent heading: "La grogne des Juges du Tribunal de La Haye".

177. The publication on 13 February 1995 of the indictments of 21 suspects against whom arrest warrants were issued only checked the impatience for a while. From that point onwards, everything gave the impression that the positive effect produced by the number of persons indicted had been tempered by the absence of resources available to the Tribunal to enforce compliance with its decisions. At the end of the winter of 1995, the public's perception of the Tribunal could be described as ambivalent. The Tribunal's good intentions were no longer subject to reservations, but doubts remained as to its practical effectiveness.

178. At the same time as alarms were sounded, however, several news agencies, convinced that the Tribunal held at least the power of moral denunciation, made a demand: the Tribunal should do more, aim higher and strike harder. But they wondered whether it would dare to do so or whether, in fact, it could.

(c) The period of credibility

179. Two major events occurred during the last week of April 1995: the announcement of investigations of Bosnian Serb leaders and the initial appearance of Tadić two days after his transfer to The Hague. That was the first time an accused found himself in the dock. The image of a court in action was projected.

180. Many articles and televised reports (134 were counted) were published or broadcast during that week. The most eloquent headline was probably the one which appeared in the Amsterdam daily De Telegraaf on 27 April 1995: "The paper tiger is roaring", and thus expressed relief proportionate to the impatience and demands felt until then, even if some doubts still remained.

181. In fact, the Tribunal had negotiated two essential obstacles: first, it had ceased to exist only in appearance but had begun to operate visibly and substantively. Several editorials and comments used the word "credibility" in their articles on the Tribunal. Secondly, thanks to the radio and television publicity resulting from the announcement of the names of highly placed suspects and to the professional quality of the images which the Tribunal itself produced and then made available to the media, the Tribunal literally took shape in the eyes of the man and woman "in the street" as a consequence of the various hearings in April and May 1995. These included the initial appearance of Tadić and the Lašva river valley and Bosnian Serb leadership deferral hearings.

182. The enhanced credibility of the Tribunal was clearly expressed in comments on the possible political consequences of the Prosecutor's decisions and the judges' action. But nothing said or written sounded like a reproach against the Tribunal for carrying out its mandate even if the mandate was described as troublesome for the United Nations. On 25 April 1995, The New York Times depicted the United Nations as "torn between its blue helmets and its black robes".

183. The same reactions were noted when the Tribunal announced, on 25 July 1995, indictments against a further 24 persons, including 3 leadership figures. The reports on the indictments of Karadžić and Mladić were not only numerous, and from all around the world, but also mostly factual in content: even if the

issue of the execution of the warrants was raised and the impact of the decision upon the "peace-process" questioned, the validity of the indictments was not discussed. In the eyes of the press, the Tribunal no longer merely existed; it was doing what it was supposed to do, and in so doing had established its credibility. It was no longer the legal abstraction that many believed it would remain. One shadow which was cast was the unwarranted assertion by some in the media that Serbs were being unfairly singled out for prosecution by the Tribunal.

184. It should be noted that the Tribunal's first judicial steps were covered on average by 28 news organizations between April and July 1995.

3. The Tribunal and its outside contacts

185. Since it had mainly concentrated on its media policy, the Tribunal did not have the resources fully to develop an institutional communications policy. Initial structuring began, however, at the beginning of 1995. The file now contains information on addresses and telephone numbers of 344 outside contacts, divided as follows:

- 21 non-governmental organizations;
- 32 legal practitioners;
- 79 diplomatic representations;
- 212 miscellaneous institutions or individuals (universities, researchers, associations, students, etc.).

186. The file enables all public documents of the Tribunal, once they have been published, to be sent to the continually growing number of members on the list in an orderly fashion.

Part four

CONCLUSION

187. The Tribunal has enjoyed the support of the United Nations and growing cooperation by a number of States in the past year, but it has had to navigate in troubled waters. Its momentum might have been lost altogether if it had proceeded only against the immediate perpetrators of crimes under international humanitarian law. The Tribunal might then have failed in the mission assigned to it by the Security Council. Instead, it has chosen to break new ground with a clearly enunciated policy of prosecuting those in command who ordered or failed to punish the egregious crimes being committed.

188. The strategy of prosecuting political and military leaders, which has been initiated by the deferral proceedings and indictments against Karadžić, Mladić and Martić, has therefore given the Tribunal the credibility essential to its appointed task.

189. Disappointment may nevertheless be felt that, so far, only one accused has been surrendered to the Tribunal to stand trial. Of course, the Tribunal will conduct trials whenever States which are mindful of their duty to cooperate with the Tribunal, and are in a position to do so, take custody of suspects and surrender them to the Tribunal.

190. Nevertheless this mood of disappointment underlines the point that the Tribunal faces unique problems as an international criminal court, albeit one of an ad hoc nature. It is worthwhile to describe three dilemmas which, in addition to financial problems, can greatly limit the effectiveness of the Tribunal and slow down the pace of its action.

191. First, as pointed out at paragraph 129 above, the Tribunal has no enforcement agencies at its disposal; it must necessarily rely upon the cooperation of States. Only States can execute arrest warrants, or warrants for search and seizure; only States can make it possible for the Tribunal's investigators to interview witnesses and to collect other evidence; only States can enforce sentences rendered by the Tribunal by holding persons convicted and sentenced at The Hague in their own prisons. As long as States do not fully cooperate with the Tribunal, its action is hampered. Regrettably, some States have withheld any cooperation: reference should be made in particular to the Federal Republic of Yugoslavia (Serbia and Montenegro), as well as some de facto authorities such as the self-styled Republics of Krajina and Srpska. Equally, a number of States have so far failed to pass implementing legislation enabling them to assist the Tribunal. In this connection mention can be made in particular of some neighbouring States of the former Yugoslavia, for which the question of cooperation arises with particular urgency.

192. The second problem is related to the limitations inherent in any international criminal jurisdiction trying offences that have been committed in a distant country. Compared to national criminal courts, which enjoy the support and cooperation of centralized prosecuting services, ministries of justice and police forces, the Tribunal is placed, with its resources, in a quite different position. The Tribunal does not command a squad of police officers who can be dispatched to the scene of a crime within hours of its commission to secure evidence and hand it over to specialized investigators. On the contrary, in the early stages of an investigation into war crimes or crimes against humanity evidence may be collected by NGOs in the field which may lack forensic expertise, and any evidence obtained must therefore be double-checked by professional investigators. These investigators in the Office of the Prosecutor comprise some 80 staff, roughly the number of investigators used for 10 murders at the national level.

193. Further, in the national setting, the accused is often apprehended shortly after the crime has been committed. This would be rare indeed for the perpetrator of an international crime. Finally, national crimes and international crimes are often radically different in nature. National crimes typically involve one accused and one victim, whereas international crimes, in particular crimes against humanity and genocide, typically involve many perpetrators committing a whole catalogue of offences against a great many victims.

194. The third problem is that the Tribunal has been established in the midst of an armed conflict, mostly a war on civilians, where bloodshed and terrorist attacks are daily occurrences. This is in stark contrast to the usual situation. Usually, legal norms and institutions come "after the event", in recognition of a new state of affairs. Judicial institutions dealing with crimes committed in the course of hostilities are therefore usually only convened at the war's end. This is what occurred at Nuremberg and Tokyo, when Germany and Japan were occupied and many of their leaders captured by allied forces.

195. By contrast, the Tribunal has been called upon to dispense justice while warfare, very often pursued by illegal means and methods, continues. High-ranking planners and perpetrators of war crimes are still able to take shelter from prosecution under the protective umbrella of military or political power. The Tribunal, clearly, can expect no cooperation from those authorities who may have been complicit, or at least negligent, in preventing serious violations of international humanitarian law, and it does not anticipate that they will surrender any suspects, or themselves, to the Tribunal.

196. All of this greatly complicates the task of the Tribunal. Investigators may be prevented from collecting evidence or interviewing witnesses by the fact that armed clashes are occurring in the relevant territories. Witnesses may, in the absence of a protective State apparatus, fear immediate reprisals against themselves or their relatives, and therefore be reluctant to come forward to testify. A cooperating State may find it impossible to execute arrest or search warrants, or to hand over suspects to the Tribunal. Normal, law-abiding citizens may be rendered partisan by the armed conflict, hailing war criminals as heroes and viewing cooperation with the Tribunal as treacherous. In this context, it is worth noting that the Tribunal has been criticized for the fact that all of the indictments so far confirmed have been against Serbs. This criticism, besides being misguided, is simply grist to the mill of ethno-nationalism. The Tribunal does not prosecute members of "ethnic groups", but individuals who are accused of grave crimes.

197. The problems described above have not all proved to be insurmountable. A solution to the problem of being unable to bring an accused before the Tribunal was found, taking into account the Tribunal's decision not to allow trials in absentia, by creating a special procedure - rule 61 proceedings. Rule 61, "Procedure in case of failure to execute a warrant" (referred to in para. 16 above), allows for the confirmation by the full Trial Chamber of an indictment issued against an accused when it has not been possible to arrest him. It provides for a public hearing at which witnesses may be called to give evidence. If the Trial Chamber hearing the application is satisfied that there are reasonable grounds for believing that the accused has committed any of the crimes charged in the indictment, it makes a public announcement to that effect.

198. Proceedings under rule 61 do not abrogate the accused's right, under the statute, to be present at his trial, since the proceedings are not a trial nor do they result in a judgement. If the accused were ever to surrender to custody, a whole new trial would take place in his presence, and he would be presumed innocent notwithstanding the rule 61 finding. Rule 61 does, however, prevent the accused from obstructing and, indeed, nullifying international

criminal justice simply by absconding or refusing to stand trial. An adverse finding arising from a rule 61 proceeding will, first, result in the issue of an international arrest warrant by the Trial Chamber which is transmitted to all States and may result in the accused's arrest abroad. 11/ Secondly, the public hearing may persuade the relevant authorities to deliver the accused to the Tribunal. Where the accused is a leadership figure, the international arrest warrant will mean that he cannot leave his seat of power without risking arrest, rendering it difficult for him to perform as an effective leader. Thirdly, rule 61 affords a formal means of redress for the victims of the absent accused's alleged crimes by giving them an opportunity to testify in public and to have their testimony recorded for posterity. Thus the accused cannot escape from international justice simply by staying away from the Tribunal.

199. All those working at the Tribunal realize the historic role which they have to play in setting precedents for future international criminal organs, notably a permanent criminal court - "the missing link of international law" - and they have watched with great interest the tentative moves towards turning the United Nations International Law Commission's draft statute for a permanent criminal court into a viable court. The Tribunal may well prove to be a major stepping-stone to the court's establishment, since it has had to develop rules and regulations for all stages of its proceedings, most of which are pioneering. If the Tribunal can prove to the world that it is possible to administer international criminal justice, that it is imperative for legal and moral reasons and practical to do so, it will have performed a great service for the development of international law. It will also send a message to the victims of appalling crimes that humanity will not turn its back on them.

Notes

1/ Whenever the terms "Bosnian Serb forces" or "Bosnian Serb de facto administration" are used in the annual report, reference is being made, unless otherwise indicated, only to Bosnian Serbs who are in the military or civilian service of the de facto administration which has its political headquarters in Pale. In particular, no reference is intended or to be implied to any Bosnian Serbs who are loyal to the Republic of Bosnia and Herzegovina.

2/ Professor Christine Chinkin, Dean and Professor of International Law, University of Southampton, United Kingdom of Great Britain and Northern Ireland, and, in a joint brief, Ms. Rhonda Copelon, Professor of Law, City University, New York, Ms. Felice Gaer, Ms. Jennifer M. Green and Ms. Sara Hossain, on behalf of the Jacob Blaustein Institute for the Advancement of Human Rights of the American Jewish Committee, New York; the Center for Constitutional Rights, New York; the International Women's Human Rights Law Clinic of the City University of New York, New York; and the Women Refugees Project of the Harvard Immigration and Refugee Program and Cambridge and Somerville Legal Services, both of Cambridge, Massachusetts.

3/ The following rules have been amended: 2, 3, 5, 8, 9, 10, 12, 13, 15, 28, 36, 37, 39, 40, 42, 43, 45, 47, 53, 54, 55, 57, 61, 62, 65, 66, 68, 70, 72, 75, 77, 88, 90, 91, 93, 95, 96, 101, 105, 108, 117.

4/ The amendments adopted at the sixth plenary session were relatively routine. One amendment was made only to the French text of the rules to rectify a discrepancy between the French and English versions of sub-rule 99 (B). The other two amendments clarified how the work of the Tribunal would be divided between the two Trial Chambers. Formerly sub-rule 61 (A) called upon "a Judge of a Trial Chamber" to order that the indictment be submitted "to the Trial Chamber" once he or she was satisfied that certain steps relating to attempts to effect personal service or otherwise inform the accused of the existence of the indictment were taken. Based on the revised wording of sub-rule 61 (A), it is clear that the judge who confirmed the indictment under rule 47 must make the sub-rule 61 (A) determination and that it must be his or her Trial Chamber that hears the proceeding under sub-rule 61.

Sub-rule 10 (C) was also amended so that it now provides that where deferral to the Tribunal has been requested by a Trial Chamber, "any subsequent trial" shall be held before the other Trial Chamber. The previous version of the rule had called for "any subsequent proceedings" to be held before the other Trial Chamber, creating a possible impression that a Trial Chamber which heard a deferral would not be permitted to hear either a rule 47 or a rule 61 proceeding.

It is now clear that a rule 10 deferral proceeding, a rule 47 review of the indictment, the sub-rule 61 (A) determination and a sub-rule 61 (C) proceeding will all be heard by the same Trial Chamber, with the other Trial Chamber standing in reserve for the actual trial, should it take place. The fact that the Trial Chamber hearing the trial proper will be wholly unacquainted with the facts and history of the case at first hand helps to ensure that the trial shall both be and appear to be fair and impartial.

5/ The following rules were amended at the seventh plenary session: rules 15 (E) (clarifying the meaning of the expression "part-heard"), 62 (iii) (defendant must plead to each count of the indictment), 69 (B) and 75 (regarding the role of the Victims and Witnesses Unit).

6/ In general, amendments were also made simply to improve the clarity, consistency and completeness of the rules. An amendment to clarify the rules is a new sub-rule (F) added to rule 45 to clarify the situation where an accused wishes to represent himself. Sub-rule 45 (G), which is also new, provides that where an allegedly indigent person is subsequently found not to be indigent, an order may be made to recover the costs of providing counsel. This latter provision establishes a mechanism to recover costs from an accused who either fails to appoint counsel so as to benefit from the provisions of this rule or who disguises his assets. Other amendments in this category are rules 3, 53 (B), 54, 55, 88 and 117, and the headings of rules 37, 75 and 117. A good example of an amendment made in the interests of consistency is rule 15 (B) (disqualification of judges from both Trial and Appeals Chambers), and other examples are rules 5, 8, 36, and 117 (B). An example of an amendment made for completeness is rule 2, where the word "transaction" has become a defined term. Another example of such an amendment is the addition of what has become sub-rule 90 (C) (replacing the former 90 (C) which has become 90 (D)). Here provision is made for a child who is not able to understand the nature of a

solemn declaration. Other amendments in this category are sub-clauses (iv) and (v) of rule 62 and rule 117.

7/ The amendments to rules 43 (iv), 57 and 65 (B) also fall into this category. For example, new language was added to clause (iv) of rule 43 to indicate that the Prosecutor's obligation to have an audio or videotape recording of a suspect's testimony transcribed must be met "as soon as practicable after the conclusion of the questioning". This amendment removes any suggestion that the transcript is to be provided immediately following the questioning - something which could be impossible, especially in the field.

Rule 57 deals with the transfer of the accused to the seat of the Tribunal. The rule had formerly contemplated only that "the State authorities concerned" and the Registrar would arrange the transfer; at the request of the Dutch Government, however, the rule was amended to include a reference to the "authorities of the host country" in arranging the transfer. Another amendment which was made to address a concern of the Dutch Government was the addition of new language to rule 65 (B) to give the Dutch Government a role in the provisional release of an accused.

8/ Other amendments in this category were made to rules 28 (assignment of judges to review indictments), 37 (A) (Prosecutor's regulations), 40 (provisional measures), 90 (D) (witness's privilege against self-incrimination), 105 (restitution), 108 (timing of notice of appeal) and 116 bis (expedited appeals process for decisions dismissing an objection based on lack of jurisdiction, or a decision rendered under rule 77 (contempt of the Tribunal) or rule 91 (false testimony)).

9/ Further amendments in this category were made to rules 42 (A), 93 (adding a requirement that the Prosecutor disclose evidence of a consistent pattern of conduct to the defence) and 95 (exclusion of evidence because of how it was obtained). The amendment to rule 95, which was made on the basis of proposals from the Governments of the United Kingdom and the United States, puts parties on notice that although a Trial Chamber is not bound by national rules of evidence, it will refuse to admit evidence - no matter how probative - if it was obtained by improper methods.

10/ The term "Knin" refers to the de facto administration which, prior to 4 August 1995, had its political headquarters in Knin, in the Krajina region of Croatia.

11/ The international arrest warrant differs from the arrest warrant issued upon the initial confirmation of the indictment in two respects: it is sent to all States, and not simply the State or administration having de facto authority over the region where the accused is believed to reside, and it is issued by the full Trial Chamber consisting of three judges and not simply a single judge.